Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:[redacted]:POSTF-107151-02
[redacted]

date: April 30, 2002

to: [redacted], Revenue Agent

from: Associate Area Counsel (LMSB)
[redacted]

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subject: **Request for Advice: Bad Debt Issue**

Taxpayer: [redacted] **Company**
Tax Years: Ending December 31, [redacted], [redacted], **and** [redacted]

This advice may contain privileged information; accordingly, any unauthorized disclosure of it may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

You have requested our advice regarding the following issues: (1) whether a $[redacted] loan made by the above-named taxpayer (Bank) in [redacted] to the [redacted], [redacted] and [redacted] (the Tribes), became worthless prior to the end of the [redacted] tax year, or in a subsequent year and,(2) pursuant to the loan agreement, was the bank required to accrue interest income in [redacted], [redacted] and [redacted]?

It is our opinion, as discussed below, that the loan made to the Tribes did not become worthless, either wholly or partially, in [redacted]. Thus the Bank was required to report the interest which accrued on this obligation on its [redacted] return. Furthermore, under the facts which have so far emerged, we question whether the loan became worthless during either of the two subsequent years. If the loan did not become worthless, then the interest which accrued should also have been reported for these years.

FACTUAL BACKGROUND:

This accrual-basis taxpayer is a commercial bank, with assets of approximately $[redacted], which has been doing business in [redacted], since [redacted]. Its tax year ends on December 31st and it uses the reserve method to account for debt assets which have become worthless or partially worthless, calculating and deducting a reasonable addition to the reserve for bad debts each year under the experience method. The Bank

did not elect the "conformity method" for determining worthlessness for its bad debts during the years at issue.

In [redacted], the taxpayer established a relationship with the Tribes by giving them a loan (a line of credit) in the amount of $[redacted]. The stated purpose for this was to provide funding for the Tribes to establish a gaming facility pursuant to the Federal Indian Gaming Regulatory Act of 10/1/88. Under the terms of the loan agreement, the Tribes were to provide a limited waiver of sovereign immunity and consent to suit, set up a temporary gaming facility by [redacted], give the Bank the automatic teller machine (ATM) concession at their temporary or permanent gaming facility, give the Bank a security interest in Net Win Revenues derived from gaming, deposit tribal revenues with the Bank, make an interest payment ([redacted]% above prime rate) on [redacted], and pay the money back on demand, or if no earlier demand was made, by [redacted]. The temporary gaming facility was apparently never put into operation. According to the taxpayer's representative, the loan was subsequently renewed for a [redacted] pay-off date. Then, in [redacted], the loan was again renewed by the execution of a new loan agreement, promissory note, and security agreement, as discussed below. Information provided indicates that the Tribes made no payments, either of interest or principle, on their first note until it was paid off (by the borrowing of additional funds) in [redacted].

The Tribes had been working toward setting up a gaming facility for several years prior to obtaining their initial loan from the Bank. In [redacted], they had negotiated a [redacted] Gaming Compact with the [redacted] which was approved by Federal authorities in [redacted]. This Compact gave the Tribes a legal right to conduct both temporary and permanent [redacted] and [redacted] gaming within the boundaries of their Reservation located in the [redacted] section of [redacted]. However, because the [redacted] Indian Tribe had also secured a gaming compact for the [redacted] area and had already opened a casino on the major highway running through that town, the Tribes decided they must build their casino at another location.

The Tribes investigated specific properties in [redacted] and in [redacted], and it was to develop the latter possibility that they obtained the [redacted] loan. The borrowed funds were to provide "initial project financing." It was understood that this loan amount was insufficient to actually build a gaming establishment, either temporary or permanent. Once a qualified site was identified, however, the Tribes planned to obtain further financing and expertise from professional Indian gaming entities. Ultimately, it became clear that the [redacted] property would not be qualified for gaming. The Tribes then

located a satisfactory site on [redacted] and went back to the Bank to obtain further financial assistance.[1]

The Bank loaned the Tribes $[redacted] on [redacted]. Under the terms of the loan agreement, the [redacted] loan was renewed and $[redacted] of the amount borrowed was used to pay off the outstanding balance on the old note. This included the payment of interest due on that note. The remaining $[redacted] was to purchase the [redacted] of land near [redacted] on which the Tribes planned to construct a gaming facility. It was understood that, in order for this property to qualify for gaming activities, it had to be placed in trust with the Bureau of Indian Affairs; thus, the Bank was not given a lien on the property. Instead, as under the old loan agreement, the Bank received a security interest in the Net Win Revenue of any future (temporary or permanent) Tribal gaming establishment, as well as all gaming-related Tribal Hall revenue and/or other Tribal funds. The Tribes' stated intention was to repay the debt from Net Win Revenues. They agreed to start a temporary facility by [redacted], and to deposit all gaming revenue and funds with the Bank.

As partial consideration for the loan, the Tribes granted the Bank an exclusive right to install and operate ATMs at any temporary/permanent gaming facility. Also, as for the prior loan, the Tribes executed a (limited) waiver of their sovereign immunity. Interest on the loan was set at [redacted]% over the prime rate, with the first payment due on [redacted]. Remaining interest was to be paid, along with the principal, on demand or, if no demand was made, on [redacted]. Subsequently, the parties amended the note to extend the due date for the first interest payment to the maturity date, that is, [redacted].

No payments of interest have been made by the Tribes and no amount of the principal has been repaid. A temporary gaming facility has not been established. Apparently, the Tribes planned to set this up on their [redacted], but two gaming experts (a consulting firm and a financing entity, alleged by the Bank to be "knowledgeable and experienced professionals in the Indian gaming field") determined that the [redacted] site was not

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[1]The ancestral territory of these Tribes once covered [redacted] in [redacted]. They were forced into reservations and their populations were decimated. In [redacted] they lost their [redacted], but in [redacted], as a [redacted], they regained it. However, the Reservation granted to them comprised [redacted].

"economically viable," and on [redacted] refused to provide the $[redacted] to [redacted] in financing needed to establish a facility on that site.

As to the [redacted] site intended for a (permanent) casino, Federal statutes provide that Indian gaming facilities cannot be established on tribal property acquired after 10/17/88 unless an exemption is obtained. (An exemption can be granted for certain "restored" lands or for lands contiguous with the boundaries of an existing Reservation.) [redacted]. The Tribes are currently negotiating a gaming compact with the State which will allow them to move ahead on building the facility.[2]

In [redacted], the [redacted] completed a field examination of the Bank. Reportedly, in their "exit critique" they indicated that they might require the $[redacted] loan to the Tribes be reclassified as substandard, and in their [redacted] written report, they did require this. (The "substandard" classification is applied to loans which are inadequately protected from future loss and, for book purposes, a [redacted]% reduction in the booked value of the asset is required.) Also, in a letter written in [redacted], the State Banking Section Manager noted that, [redacted]." The revenue agent requested the Bank to provide copies of the State examiners' report, but the Bank refused. Correspondence has been provided, but a letter written to the State on [redacted], which contained the Bank's response to some of the State's proposals, could "not be located."

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[2] [redacted]

The Bank did not reclassify the loan as substandard on its books. What it did do, in [redacted], was to write off the debt, back-dating the entries to [redacted]. The bank did not report accrual of any interest on this note for [redacted] or for any subsequent year. Although the Bank has provided some contemporaneous records for the last quarter of [redacted] and the first quarter of [redacted], including minutes of meetings of its Board of Directors, none of the records or documents provided contain information to show why the Bank's decision makers chose not to follow the recommendations of the State auditors to reclassify the loan and, instead, decided the loan had become worthless in [redacted]. It is unclear what facts and circumstances were considered in making these decisions. We understand that during this time period, the Bank was corresponding with State Auditors concerning the audit and was also going through the process of becoming listed on the NASDAQ. The Bank's representative now asserts that the "event" which indicated that the loan had become totally worthless was when the two professional gaming entities declined to finance a temporary facility at [redacted].

When the State conducted another examination of the Bank in [redacted], it apparently did not consider or make comment on the [redacted] write-off of the Tribes' debt. The examiners did not state or confirm in writing that the charge-off of this debt would have been specifically ordered if the audit had been done on [redacted]. Also, so far as we are aware, the examiners made no express determination either in [redacted] or [redacted] that the Bank's loan loss classification standards were maintained in a manner consistent with State regulatory standards. Correspondence between the Bank and the State indicate, in fact, that the State was critical of some of the Bank's methods, and in response, the Bank adopted a revised method for determining its loan loss reserves for book purposes, which was effective on [redacted].

However, in applying this "new" method for [redacted], the "historical loss" element, which included net loan amounts charged off for [redacted] did not include the Tribes' debt, although it was charged off in that year; nor was the Tribes' debt included in the "substandard classification" element of the calculation. Thus, although the loan asset was taken off the Bank's books in [redacted], it did not appear in any reserve calculations in subsequent years. The Bank's representative states that the Board of Directors determined this loan should not be included in subsequent year calculations of the allowance for loan loss reserve because it was a unique loan and would not be likely to re-occur. They felt that including the loan would distort and overstate the allowance for loan loss reserve. They did include this loan in calculating the addition to the bad debt reserve for tax purposes, however. As a result, the Board's

action created an inconsistent treatment of this loan, between book and tax, as it relates to reserve calculations in subsequent years. For example, the addition to the bad debt reserve for book in [redacted] was $[redacted] but that for tax was $[redacted].

The Bank has taken no action to enforce any of the terms of their loan agreement with the Tribes. They have issued no notices of default nor have they taken any other informal, formal or legal actions. When interviewed, the Bank President stated that he is in contact with the Tribes regarding their obligation and, if they are not allowed to build their casino and thus pay off the loan through its operation, the [redacted] will be taken out of trust and sold in order to pay the debt. The President believes that the Bank will get its money.

Based on the facts described above, you determined that the Bank has failed to demonstrate that its loan to the Tribes became worthless in [redacted], or in the subsequent years under examination ([redacted], [redacted]), and you propose an adjustment to the bad debt deduction for [redacted] in the amount of $[redacted]. (This amount includes corrections made to the Bank's method of calculating its bad debt reserve for tax purposes, which the Bank does not dispute.) You have also determined that interest on the Tribes' note accrued, for tax purposes, and should have been reported in the amounts of $[redacted], $[redacted] and $[redacted] for [redacted], [redacted] and [redacted], respectively. You propose adjustments in these amounts for these years. You have requested our opinion concerning these proposed adjustments.

LEGAL ANALYSIS and DISCUSSION:

A. Bad Debt Issue.

I.R.S. § 166 allows a corporation such as the taxpayer to claim a deduction for any debt which has become, within the taxable year, either partly or wholly worthless. Depending on the type and size of an institution, such a "bad debt" may be taken into account as a deduction either in the amount of the specific debt or as a reasonable addition to a reserve for bad debts. Because the Bank herein is a "small bank" within the definitions set out in I.R.C. § 581 and Treas. Reg. § 1.166-2(d)(4)(i), it is allowed, under Treas. Reg. § 1.166-1(a) and I.R.S. § 585, to set up a reserve for bad debts and to take as its "bad debt" deductions the amount of the (yearly) addition to its bad debt reserve. This is in lieu of the specific deductions which would otherwise be allowed under I.R.C. § 166(a). Treas. Reg. § 1.535-2(a) provides that any deductions claimed for additions to a bad debt reserve for tax years beginning after 12/31/87, must be determined under the experience method set out

in Treas. Reg. § 1.585-2(c). Thus the Bank herein selected the experience method, which is one form of the reserve method, to account for its loan losses.

Only a bona fide debt, arising from a debtor-creditor relationship based on a valid, enforceable obligation to repay a fixed or determinable sum of money, can qualify as a deductible bad debt. Treas. Reg. § 1.166-1(c). The debt must be shown, by objective standards, to have become worthless in the year claimed, whether or not the "bad debt" deduction is in the form of an addition to the reserve or in the amount of a specific debt, and it is the taxpayer's burden to make this showing. In determining whether a debt is worthless (or partially so), all pertinent evidence must be considered, including the value of the collateral and the financial condition of the debtor. The fact that a worthless debt is not due at the time of deduction does not of itself prevent its allowance under section 166. Also, taking legal action to collect a debt is not required in order to demonstrate worthlessness where the facts and surrounding circumstances show that the debt is indeed uncollectible, and that legal action would be fruitless. Treas. Reg. § 1.166-2(a). However, the taxpayer must show that reasonable efforts were made to collect, including demands, attempts to collect from all possible sources, discussions with the debtor to determine the objective reasons why he is currently unable to pay (if payment is due) or will not be able to pay in the future. Brewer v. Commissioner, T.C. Memo 1992-530; Cole v. Commissioner, T.C. Memo 1987-228, aff'd 871 F.2d 64 (7th Cir. 1989)

The Tax Code does not define or provide a precise test for "worthlessness," and, under case law, no single factor or type of event has been held to be definitive. Rather, examination of all events, all the facts and circumstances, is required to determine whether and when a debt has become worthless. Moreover, whether or not a debt became worthless at a given point in time is determined by the facts and circumstances at that time; subsequent events may not be cited as evidence, although they can be considered in evaluating the soundness of the creditor's prior determination. Minneapolis, St. Paul & Sault Ste Marie RR v. U.S., 164 Cl. Ct. 266 (1964). It may be difficult to determine the precise moment a debt becomes worthless; however, the tax year of worthlessness must be fixed by identifiable events which constitute reasonable grounds for abandoning any hope of recovery. Crown v. Commissioner, 77 T.C. 582, 598 (1981).

For banks and other regulated corporations, a conclusive presumption as to the year a debt becomes worthlessness is provided by Treas. Reg. § 1.166-2(d)(1). Under this section, where a debt is charged off in obedience to the specific orders

of State or Federal regulators, and a bad debt deduction is claimed for that tax year, the date of the charge-off is presumed to be the date the debt became worthless. If no direct order is issued by the regulators prior to the date of charge-off, this presumption will still apply if the regulatory authorities then confirm in writing at their first subsequent audit, that the charge-off would have been ordered by them if their audit had been made on the date the loan was charged off.

A second presumption for establishing the time of worthlessness is also available for banks which use the "conformity method" provided by Treas. Reg. § 1.166-2(d)(3). Under this section, any debt charged off by a regulated bank will be conclusively deemed worthless at the date of charge-off if (1) the bank elects to use the method, (2) the loan is classified as a loss asset under the bank's loan review process, and (3) prior to the charge-off the bank met the "express determination" requirement. This latter element is met if, during its most recent examination of the bank's loan review procedures, the bank's supervisory authority (Federal or State) made an express determination that the bank maintains and applies loan loss classification standards in a manner consistent with the authority's regulatory standards. If this is done, no further evidence of worthless is required for any specific debt.

In the present case, however, the Bank cannot claim the Tribes' loan to be worthless under either of the conclusive presumptions provided under the regulations. The Bank did not file Form 3115 or otherwise elect to use the conformity method for determining the worthlessness of its loan assets for the years at issue, nor did it meet the "express determination" and other requirements of section 1.166-2(d)(3). The loan to the Tribes also did not qualify for the presumption provided under section 1.116-2(d)(1) because the charge-off was not made in obedience to the specific order of State regulators nor did these regulators afterwards confirm that the charge-off would have been subject to such orders had the audit been made on [redacted]. That the regulators issued no such order or confirmation is not surprising since, in [redacted], they were considering a reclassification of the loan as substandard, not a write-off, and they confirmed this in their [redacted] written report.

Thus, in order to claim a "bad debt" deduction for the loan made to the Tribes in [redacted], the Bank has the burden to show, under the facts and circumstances existing at the time, that the debt had become worthless, that it was indeed uncollectible, presently or in the future, and so had no worth. They have not provided this evidence.

There is no question that the debt at issue here is a bona fide one, and it is apparent that the Tribes were in default by the end of [redacted] in regard to one of the terms of the loan agreement--that they would open a temporary gaming facility by [redacted]. The Tribes were not yet in default regarding the payment of interest or principal, however, since no demand had been made and the parties had agreed that no interest would be due until the [redacted] maturity date. The fact that a borrower is in default regarding one or more of the terms of a loan agreement does not, by itself, demonstrate that the underlying debt obligation has become worthless, however. Also, the determination by the State that the loan should be reclassified as "substandard" for book purposes, did not demonstrate that it was worthless (in whole or in part) for tax purposes. It did indicate that the loan was a risky one, and that it was inadequately secured. That this is so was evident from the history of the Tribes efforts to get into gaming and the dealings it had already had with the Bank at the time the first loan was paid off (by further borrowing) and the new loan agreement was executed in [redacted]. Yet the Bank loaned these additional funds to the Tribes, no doubt because it deemed the prospective benefits, should the Tribes succeed in their efforts, to be worth the risk.

It is true that in [redacted], the Tribes failed to establish a temporary facility at [redacted], but they had been delinquent in this requirement since [redacted], yet the Bank continued to allow them more time, as well to loan them more funds. Meanwhile, the Tribes were persevering in their efforts to obtain permission to build their permanent casino and, reportedly, intended to pay the Bank off from funds borrowed from gaming professionals in order to construct and set up the casino. In [redacted], the Tribes had [redacted] They are continuing in their efforts to obtain a gaming compact and to establish a permanent casino.

The Bank has made no effort to declare the loan in default or to collect anything from the Tribes. As far as we are aware it has not attempted to sell any of its rights or the contingent future benefits granted under the loan agreement. The Bank may take legal action against the Tribes with regard to this liability, but has not done so, nor has it shown why such action would be fruitless. The Bank's representative asserts that the Tribes have no assets from which the Bank could extract payment, but provides no facts to support this statement. In contrast, the Bank's President has asserted that, failing a qualification of the site for gaming, the [redacted] property could be sold to

pay off the debt. Although we do not know the terms under which this land was placed in trust, or whether, in fact, such a sale would be possible, it is clear that the Bank's Chief Executive thinks that it is and that this loan asset was not and is not worthless. Unless more evidence to the contrary is forthcoming, neither do we.

Judging from the inconsistent way in which the Bank treated its reserve calculations for book and for tax, its seems evident that it wanted to claim the benefits of larger tax deductions and of removing a relatively large, inadequately secured debt from its books (perhaps in preparation for listing its stock on the NASDAQ), without having to reflect these actions on its book "bad debt" reserve calculations in subsequent years. Under such an arrangement any repayment on the note received in the future would then reflect well on the Bank's financial statements since it would merely be reported as income in the year of receipt.

B. Interest Accrual Issue.

When a debt becomes worthless and is charged off by a bank, the interest on the note which would otherwise have accrued during the taxable year, may also be charged off and not reported as income for tax purposes. However, if it is determined that the loan asset at issue here did not become worthless in the year claimed, the Bank would then be required to accrue and report the interest as income on its tax returns.

Many banks have a policy of not accruing interest income on its books for loans which are deemed "nonperforming" but have not yet been written off as bad debts. This policy may be supported by State banking laws. The determination of "nonperformance" may be based on a certain period of delinquency, a partial write-off to the reserve account and/or the fact that a loan account is in the process of being restructured or renegotiated.

I.R.C. § 451(a) and Treas. Reg. § 1.451(a) provide that income is includible in the gross income of an accrual basis taxpayer when all the events have occurred which fix the right to receive the income, and the amount can be determined with reasonable accuracy. In applying this rule to the accrual of interest income, performance occurs when the lender allows the borrower to use the lender's funds. When the lender has done this for any one day, one day's performance has occurred and one day's interest accrues. Rev. Rul. 77-135, 1977-1 133. Thus, an accrual basis taxpayer who has a right to receive interest with respect to loans negotiated with a debtor, must accrue it into income after the loan has been made, unless the taxpayer can show that the interest is uncollectible (in the same way a "bad debt"

is uncollectible), so that the right to receive it is of no worth. Whether or not State law supports a policy for nonaccrual of interest on "nonperforming" loans, is not a controlling consideration for tax purposes. Rev. Rul. 68-220, 1968-1 C.B. 194. Instead, what must be considered is whether interest on a loan is of doubtful collectibility, and the burden is on the taxpayer to demonstrate this. Broderick v. Anderson, 23 F.Supp 488 (SDNY, 1983); Greer-Robbins Co. v. Commissioner, 119 F.2nd 92 (9th Cir., 1941).

Even where a debt subsequently becomes uncollectible, interest income earned prior to the time the debt became worthless must be included in gross income. Spring city Foundry Co. v. Commissioner, 292 U.S. 182 (1934). Thus, when a loan becomes uncollectible, the interest should be accrued to the point of uncollectibility. The accrued interest receivable, if not collected, should be treated as accrued interest on a bad debt pursuant to Section 166 and charged to the reserve account. See Rev. Rul. 80-361, 1980-2 C.B. 164.

Thus, in the case herein, the interest earned on the Tribes' note for [redacted] should have been accrued into income in [redacted]. The same is true for the subsequent years under examination, even if the loan is deemed substandard or "non-performing," unless further factual development shows that the Tribes' debt became worthless in one of these years.[3]

RECOMMENDATIONS and HAZARDS:

Based on the facts and information which you have provided in this case, we have concluded above that the loan made to the Tribes did not become worthless in [redacted], and that interest earned on the loan should have been included in gross income for that year. We have also concluded, but more tentatively, that the loan did not become worthless during the two subsequent years. Additional information is needed, however, in order to confirm these conclusions. Also, if the Bank were to change its position regarding the year of worthlessness, it is our opinion (again, based on the facts set forth above) that it would have a reasonable chance of prevailing on the argument that the debt became worthless at the time that Interior issued its unfavorable ruling regarding the qualification of the [redacted] site for gaming in late [redacted]. This would be so, in particular, if it is

[3]As you are aware, the question of whether interest earned by a regulated bank on nonperforming loans must be included in gross income for tax purposes, is currently an issue being coordinated by Commercial Banking.

shown that, contrary to the belief of the Bank's President, the Tribes could not (or could refuse to) take their property out of trust to pay off the loan. Thus, it is important to obtain further information regarding these possibilities.

Also, as you know, one of the Bank's representatives, the accounting firm of [redacted] LLP (who you believe might have recommended that the Bank write off the loan in [redacted] as part of an effort to prepare the Bank's financial statements for listing its stock on the NASDAQ) wrote a letter to State regulators in [redacted], wherein they set forth a somewhat slanted version of some of the relevant facts. The Bank was not identified, allegedly, because State regulations would not have allowed the Banking Section to comment on the affairs of a specific bank under its jurisdiction. Based on the facts as described, [redacted] asked the regulators for an opinion regarding four hypothetical questions: (1) whether it was reasonable and proper for the Bank to have written off the loan; (2) whether this should have been required in [redacted]; (3) if the loan had not be written off would state examiners have required this after its [redacted] audit; or (4) would they have required it after Interior issued its unfavorable ruling to the Tribes in [redacted]. (In [redacted], the State sent a letter to [redacted] answering all these questions in the affirmative.) This correspondence appears to have been initiated by [redacted] in an attempt to bring the Bank's case within the requirements of section 1.166-2(d)(1) [in spirit, if not in fact]. It clearly does not satisfy the requirements of that section, so that the presumption concerning worthlessness afforded by it does not apply. However, these letters do underscore the importance of determining the facts in this case, as they were understood or perceived by State auditors and by the taxpayer in [redacted] and [redacted]. Thus, we recommend that you contact the State Banking Section directly to obtain further information.

In consideration of the above, we recommend that you pursue the following lines of inquiry:

1. Obtain more information about the audits of the Bank conducted by State regulators in [redacted] and [redacted].

This would include obtaining the State's written reports and all of the correspondence between the Bank and the State which concerns the audits, the State's (proposed and actual) actions and recommendations, and the Bank's response to these. It is important to know what the State was recommending with regard to the Tribes' loan, and why, and what views Bank executives and decision makers held at that time regarding the worth, risks and collectibility of the loan. Since the Bank has refused to

provide all of this material, we strongly recommend that you contact the State auditors directly to obtain information. If State privacy rules do not allow informal disclosure, we suggest that you issue summonses requesting the information.

2. Obtain more specific information concerning the Bank's determination that the debt became worthless in [redacted].

Review all minutes of the Board of Director's meetings, as well as any other "contemporaneous" documents (correspondence, memos) provided by the taxpayer, to ascertain what factors might have been considered (when and by whom) in evaluating and making decisions concerning the risks, prospects, and worth of the Tribes' loan, either for book or tax purposes. If the documents provided do not contain this information, ask for the contemporaneous documents which do. If the taxpayer is not responsive, consider issuing a summons for this information.

3. Obtain further information from the Tribe and the Bureau of Indian Affairs about the loan and Tribal property and assets.

It would be helpful to have additional, more specific information on the relationship of the Tribes with the Bank and the understanding which existed between them, the circumstance under which the loan was made, the purchase of the [redacted] from loan proceeds, the placement of this property into trust, and whether (and under what circumstance) the property might be taken out of trust. As you know, any dealings the Service may have with Indian Tribes must be made through the TEGE revenue agents who are assigned to coordinate such matters.

4. We also suggest that you check the deeds and other documents which have been recorded concerning the [redacted] property, to confirm the Bank's assertion that it was given no lien on the property, and to see whether the conditions under which the land was placed in trust are reflected on any recorded documents.

We are willing to give you further help or advice, should this be needed, in preparing summonses, making third party contacts or taking other actions to develop this case. If you have questions or comments concerning this memorandum, feel free to call me at [redacted].

[redacted]
Attorney (LMSB)

[redacted] Bank AO.wpd